

# In the Court of Appeals of the State of Alaska

**Thomas M. Beattie,**  
Appellant,

v.

**State of Alaska,**  
Appellee.

Court of Appeals No. **A-13685**

## **Order**

Dismissing Appeal

Date of Order: **February 10, 2022**

Trial Court Case No. **3PA-19-01221CI**

Attorney Jane Martinez, a contract attorney for the Public Defender Agency, currently represents the Appellant, Thomas Beattie. Ms. Martinez has filed a motion seeking permission to withdraw as Beattie's attorney. This motion is governed by Appellate Rule 517.1(f)(1) and Alaska Bar Association Ethics Opinion 2011-4.

In support of this motion, Ms. Martinez has submitted an affidavit explaining that she has been unable to contact Beattie at his most recently provided address or phone number, or at any number provided by an investigator. She further explains that despite their efforts, both she and the Public Defender Agency have been unable to contact Beattie to consult with him about this appeal.

This Court concludes that Ms. Martinez's motion to withdraw is moot because, given the circumstances, Beattie's appeal should be dismissed.

When the whereabouts of a criminal defendant are unknown, an appellate court has the authority to decline to consider the merits of the defendant's appeal. This is because "the defendant cannot be compelled to respond to any judgment the court may render." *White v. State*, 514 P.2d 814, 816 n.8 (Alaska 1973) (quoting *Stevens v. State*, 159 N.E. 834, 835 (Ohio App. 1927)). *Accord*, *Molinaro v. New Jersey*, 396 U.S. 365 (1970); *Ewers v. State*, 909 P.2d 373 (Alaska App. 1996).

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For this reason, Beattie's appeal is **DISMISSED**.

If Beattie later wishes to pursue this appeal, he may ask to have the appeal reinstated. Reinstatement will be allowed only if Beattie establishes good cause for it. *See Fermin v. State*, 975 P.2d 61, 62-63 (Alaska App. 1999); *White*, 514 P.2d at 816; *Ewers*, 909 P.2d at 374 n.1. In determining whether good cause for reinstatement exists, this Court will consider (a) whether Beattie can satisfactorily explain his current failure to maintain contact with his attorney and pursue the appeal, and (b) whether reinstatement of the appeal would result in prejudice to the State.

Entered at the direction of Chief Judge Allard.

Clerk of the Appellate Courts

*/s/ R. Montgomery-Sythe*

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Ryan Montgomery-Sythe,  
Chief Deputy Clerk

cc: Court of Appeals Judges  
Judge Cagle  
Trial Court Clerk - Palmier  
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